

FILED

JUN 24 2008

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

PATRICK KEOWN,)	CV 07-33-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
STATE OF MONTANA and Others,)	
)	
Defendants.)	
)	

Plaintiff Keown, a state prisoner proceeding pro se, has filed a Complaint under 42 U.S.C. § 1983 alleging a number violations of his constitutional rights. United States Magistrate Judge Keith Strong conducted preliminary screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief

can be granted.

Judge Strong issued an Order dated April 22, 2008, in which he explained that Plaintiff Keown had failed to state a claim. Judge Strong noted that the only named Defendant, the State of Montana, is entitled to Eleventh Amendment immunity, and that Plaintiff Keown fails to allege facts supporting his legal claims or to name responsible individuals. Judge Strong allowed Keown an opportunity to amend his Complaint to cure the defects, but Keown has not made any subsequent filings.

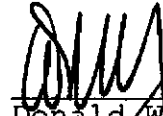
Judge Strong therefore issued Findings and Recommendations in which he recommends dismissal of the Complaint with prejudice for failure to state a claim upon which relief can be granted. Plaintiff Keown did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Strong's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Complaint is DISMISSED WITH PREJUDICE for failure to state a claim.

IT IS FURTHER ORDERED that Plaintiff Keown's filing of this action constitutes a strike for purposes of 28 U.S.C. § 1915(g). The docket should reflect the Court's certification pursuant to

Rule 24(3)(1) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

DATED this 24th day of June, 2008.



Donald W. Molloy, District Judge
United States District Court

